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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5002

BARBARA WILLIAMS and
ROSE ANN SCOTT,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(On Petition For Writ Of Certiorari To The Supreme Court of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Whether Speculation That An Informer Will Be Helpful To The Defense Requires Production Of The Informer On Trial.

STATEMENT OF THE CASE

On August 23, 1965, an informer using the name Richard Jackson subscribed a complaint for search warrant reciting his purchase of marijuana from a male Negro known to him as Jim. Present at the time of the sale was a female Negro.

On August 24, 1965, the apartment where this sale occurred was approached pursuant to a warrant based on the information of Richard Jackson. The petitioners Barbara Williams and Rose Ann Scott, the sole occupants of the apartment, refused to open the door pursuant to the demand of the officers executing the warrant and entry was forcibly made (R. 84, 85). On entering, the officers noticed the smell of marijuana (R. 137, 138), and half-smoked marijuana cigarettes in the ash trays (R. 87).

> ". . . . the ensuing search of the apartment revealed a brown manila bag containing marijuana and a Prince Albert can containing seventeen marijuana "reefers." These were found on the diningroom table. In the diningroom was another brown paper bag containing another quantity of marijuana. Every ash try contained partially smoked "reefers." A social security card bearing the name Rose Ann Scott was found in a dresser drawer in a bedroom. There were ladies garments in all the dresser drawers including the one in which Scott's social security card was found. The prevailing item in each closet was women's clothing, and before leaving both appellants requested they change clothes. Miss Williams just changed shoes and took a coat and Scott changed everything. The clothing they changed into was from one of the closets containing women's clothing." *People* v. *Williams and Scott*, —— Ill. 2d ——, 260 N.E. 2d 1, 2 (1970).

Both petitioners had keys to the apartment and both stated to the arresting officers that they lived in the apartment.

Upon the trial of the cause, petitioners denied living in the apartment or knowing of the narcotics found in the apartment. Neither the prosecution nor defense offered any testimony upon the trial on the merits as to any event occurring on August 23, 1965, although the complaint and search warrant were admitted into evidence without objection (R. 159).

Prior to trial petitioners demanded the true name and address of Richard Jackson for use upon the trial on the merits (R. 16-19). The petitioners disclaimed any attempt to contest the validity of the search warrant (R. 76 D), and conceded the propriety of the warrant (R. 76 P, Q, Y). Petitioner Scott named the seller of the narcotics as James Henry, her former boyfriend (R. 18). No subpoena was issued for him.

Petitioners contended in the trial court below that

> . . . at least one of these defendants wasn't there at the time [August 23, 1965], and being so one of the defendants, we don't know which one because [we] have to have the informer in here to say if either one of them but one defendant can conclusiyely establish her innocence and knowledge of the existence of these narcotics by the presence of the affiant. And we feel quite sure it was neither of these girls, it was some other girl. . . (Abst. 40)

Upon the trial, petitioner Scott testified that she had not been in the apartment for one week prior to her arrest (R. 174) and petitioner Williams stated that she never was in the apartment before (R. 188). The trial judge and the Supreme Court of Illinois found the facts in favor of the State from which petitioners prosecute the instant petition.

REASONS FOR DENYING THE WRIT

MERE SPECULATION THAT AN INFORMER WILL BE HELPFUL TO THE DEFENSE DOES NOT REQUIRE PRODUCTION OF AN INFORMER.

Petitioners were the sole occupants of an apartment that smelled of marijuana and contained marijuana when they were arrested.

Parroting the language of *Roviaro* v. *United States*, 353 U.S. 53 (1957) in their demand for production of the informer in this case and concluding that to oppose the request would render the prosecution ". . . akin only to a Hitler—like police state" (Pet. 7), petitioner seeks the true name and identity of the informer herein by conjuring the possibility of his usefulness to the defense.

> "We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." *Roviaro* v. *United States*, 353 U.S. 53, 62 (1957).

The significant factors in this case are that half-smoked marijuana cigarettes were in the ash trays of the apartment (R. 87), that petitioners delayed opening the door upon demand of the police (R. 84, 85), that the odor of marijuana was nevertheless noticed upon entry (R. 137, 138), that petitioners' clothing was in the apartment (R. 92), that both petitioners had keys to the apartment (R. 141, 143), and that one petitioner was wearing house

slippers and the other a smock (R. 88). Neither petitioner was present when the sale of the previous day was consumated (R. 174, 188) and neither petitioner knew the identity of the informer (R. 16-19) although the validity of the warrant was conceded prior to trial (R. 76, P,Q,Y).[1] With these facts, production of the informer was not required. *Anderson* v. *United States*, 273 F. 2d 75 (D.C. Cir. 1959); *Miller* v. *United States*, 273 F. 2d 279 (5th Cir. 1959); *Hurst* v. *United States*, 344 F. 2d 327 (9th Cir. 1965); *Lannom* v. *United States*, 381 F. 2d 858 (9th Cir. 1967).

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Petition For Writ of Certiorari in the instant case be denied.

Respectfully submitted,

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1. In the course of trial petitioners challenged the warrant on the basis that the informer signed the complaint outside the presence of the issuing magistrate (R. 121-124), but abandoned this point on appeal.